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Attorneys for Defendants  
CITY OF COTATI, OFFICER ANTHONY GARBER,  
CORPORAL BRIAN DEATON

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER JAMES ALCALA,

Plaintiff,

v.

CITY OF COTATI, OFFICER  
ANTHONY GARBER, CORPORAL  
BRIAN DEATON and DOES 1-50,  
included,

Defendants.

Case No. 3:20-cv-03414-JSC

**DEFENDANTS ANSWER TO PLAINTIFF'S  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

Hon: Jacqueline S. Corley

Defendants CITY OF COTATI, OFFICER ANTHONY GARBER and CORPORAL  
BRIAN DEATON, in answer to the allegations of the complaint ("complaint") respond as  
follows:

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.

1           8.       In answer to the allegations of paragraph 8 of the Complaint, these defendants  
2 have insufficient information or belief to enable them to answer said allegations, and for that  
3 reason and basing their denial on that ground, deny both generally and specifically, each and  
4 every, all and singular, the allegations contained therein.

5           9.       In answer to the allegations of paragraph 9 of the Complaint, t these defendants  
6 have insufficient information or belief to enable them to answer said allegations, and for that  
7 reason and basing their denial on that ground, deny both generally and specifically, each and  
8 every, all and singular, the allegations contained therein.

9           10.      In answer to the allegations of paragraph 10 of the Complaint, these defendants  
10 have insufficient information or belief to enable them to answer said allegations, and for that  
11 reason and basing their denial on that ground, deny both generally and specifically, each and  
12 every, all and singular, the allegations contained therein.

13          11.      Admit.

14          12.      In answer to the allegations of paragraph 12 of the Complaint, these defendants  
15 have insufficient information or belief to enable them to answer said allegations, and for that  
16 reason and basing their denial on that ground, deny both generally and specifically, each and  
17 every, all and singular, the allegations contained therein.

18          13.      In answer to the allegations of paragraph 13 of the Complaint, these defendants  
19 have insufficient information or belief to enable them to answer said allegations, and for that  
20 reason and basing their denial on that ground, deny both generally and specifically, each and  
21 every, all and singular, the allegations contained therein.

22          14.      In answer to the allegations of paragraph 14 of the Complaint, these defendants  
23 have insufficient information or belief to enable them to answer said allegations, and for that  
24 reason and basing their denial on that ground, deny both generally and specifically, each and  
25 every, all and singular, the allegations contained therein.

26          15.      In answer to the allegations of paragraph 15 of the Complaint, these defendants  
27 have insufficient information or belief to enable them to answer said allegations, and for that  
28

1 reason and basing their denial on that ground, deny both generally and specifically, each and  
2 every, all and singular, the allegations contained therein.

3 16. In answer to the allegations of paragraph 16 of the Complaint, these defendants  
4 have insufficient information or belief to enable them to answer said allegations, and for that  
5 reason and basing their denial on that ground, deny both generally and specifically, each and  
6 every, all and singular, the allegations contained therein.

7 17. In answer to the allegations of paragraph 17 of the Complaint, these defendants  
8 have insufficient information or belief to enable them to answer said allegations, and for that  
9 reason and basing their denial on that ground, deny both generally and specifically, each and  
10 every, all and singular, the allegations contained therein.

11 18. In answer to the allegations of paragraph 18 of the complaint, these defendants  
12 deny both generally and specifically, each and every, all and singular, the allegations contained  
13 therein.

14 19. In answer to the allegations of paragraph 19 of the Complaint, these defendants  
15 have insufficient information or belief to enable them to answer said allegations, and for that  
16 reason and basing their denial on that ground, deny both generally and specifically, each and  
17 every, all and singular, the allegations contained therein.

18 20. In answer to the allegations of paragraph 20 of the complaint, these defendants  
19 deny both generally and specifically, each and every, all and singular, the allegations contained  
20 therein.

21 21. In answer to the allegations of paragraph 21 of the complaint, these defendants  
22 deny both generally and specifically, each and every, all and singular, the allegations contained  
23 therein.

24 22. In answer to the allegations of paragraph 22 of the complaint, these defendants  
25 deny both generally and specifically, each and every, all and singular, the allegations contained  
26 therein.

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1           23. In answer to the allegations of paragraph 23 of the complaint, these defendants  
2 deny both generally and specifically, each and every, all and singular, the allegations contained  
3 therein.

4           24. In answer to the allegations of paragraph 24 of the complaint, these defendants  
5 deny both generally and specifically, each and every, all and singular, the allegations contained  
6 therein.

7           25. In answer to the allegations of paragraph 25 of the Complaint, these defendants  
8 have insufficient information or belief to enable them to answer said allegations, and for that  
9 reason and basing their denial on that ground, deny both generally and specifically, each and  
10 every, all and singular, the allegations contained therein.

11           26. In answer to the allegations of paragraph 26 of the complaint, these defendants  
12 deny both generally and specifically, each and every, all and singular, the allegations contained  
13 therein.

14           27. In answer to the allegations of paragraph 27 of the complaint, these defendants  
15 deny both generally and specifically, each and every, all and singular, the allegations contained  
16 therein.

17           28. In answer to the allegations of paragraph 28 of the complaint, these defendants  
18 deny both generally and specifically, each and every, all and singular, the allegations contained  
19 therein.

20           29. In answer to the allegations of paragraph 29 of the Complaint, these defendants  
21 have insufficient information or belief to enable them to answer said allegations, and for that  
22 reason and basing their denial on that ground, deny both generally and specifically, each and  
23 every, all and singular, the allegations contained therein.

24           30. In answer to the allegations of paragraph 30 of the Complaint, these defendants  
25 have insufficient information or belief to enable them to answer said allegations, and for that  
26 reason and basing their denial on that ground, deny both generally and specifically, each and  
27 every, all and singular, the allegations contained therein.

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31. In answer to the allegations of paragraph 31 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

32. In answer to the allegations of paragraph 32 of the Complaint, these defendants have insufficient information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

33. In answer to the allegations of paragraph 33 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

34. In answer to the allegations of paragraph 34 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

35. In answer to the allegations of paragraph 35 of the Complaint, these defendants have insufficient information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

36. In answer to the allegations of paragraph 36 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

37. In answer to the allegations of paragraph 37 of the complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

WHEREFORE, defendants pray as hereinafter follows:

FIRST AFFIRMATIVE DEFENSE

AS AND FOR A FIRST, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
ALLEGE:

1 That plaintiff assumed the risk of any injuries and/or damages resulting from the matters  
 2 set forth in said complaint, and that said assumption of risk by plaintiff was a cause of the injuries  
 3 and/or damages alleged by plaintiff, if any there were.

4 SECOND AFFIRMATIVE DEFENSE

5 AS AND FOR A SECOND, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
 6 ALLEGE:

7 That plaintiff was himself negligent and careless in and about the matters and events set  
 8 forth in the complaint, and that said negligence contributed to his alleged injuries and/or damages.  
 9 A verdict of the jury in favor of plaintiff, if any, which may be rendered in this case must  
 10 therefore be reduced by the percentage that plaintiff's negligence contributed to the accident and  
 11 injuries complained of, if any there were.

12 THIRD AFFIRMATIVE DEFENSE

13 AS AND FOR A THIRD, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
 14 ALLEGE:

15 That the complaint does not state facts sufficient to constitute a cause of action against  
 16 these answering defendants.

17 FOURTH AFFIRMATIVE DEFENSE

18 AS AND FOR A FOURTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
 19 ALLEGE:

20 Plaintiff failed to mitigate his damages.

21 FIFTH AFFIRMATIVE DEFENSE

22 AS AND FOR A FIFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
 23 ALLEGE:

24 Plaintiff was guilty of willful misconduct and wanton and reckless behavior in and about  
 25 the matters and events set forth in said complaint; and that said willful misconduct and wanton  
 26 and reckless behavior contributed to the injuries and damages alleged, if any there were.

1 SIXTH AFFIRMATIVE DEFENSE

2 AS AND FOR A SIXTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
3 ALLEGE:

4 That plaintiff willfully, wrongfully, unlawfully, and without just cause or provocation  
5 made an assault and battery against and upon the person of defendants; defendants thereupon  
6 necessarily defended themselves and such acts of force complained of were committed in the  
7 necessary protection of defendants' body and persons.

8 Prior to the time when defendants were alleged to have committed the acts complained of,  
9 plaintiff willfully, wrongfully, and unlawfully made an assault upon defendants and would have  
10 beaten, bruised, and ill-treated him if defendants had not immediately defended themselves against  
11 said assault; and in so doing, defendants necessarily and unavoidably came in contact with  
12 plaintiff and threatened plaintiff, but no more than was necessary for said defense.

13 Any damages or injuries suffered by plaintiff were occasioned by his own wrongful acts;  
14 and the acts of defendants mentioned above are the same acts of which plaintiff complains.

15 SEVENTH AFFIRMATIVE DEFENSE

16 AS AND FOR A SEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
17 ALLEGE:

18 At the time and place mentioned in the complaint, plaintiff willfully, wrongfully, and  
19 unlawfully, and without just cause or provocation made an assault and battery against and upon  
20 the person of defendants and other persons present. Plaintiff would have beaten, bruised, and  
21 seriously injured said person if defendants had not defended themselves and others against the acts  
22 of plaintiff. If, in defending themselves and others, defendants unavoidably touched and threatened  
23 plaintiff, defendants used only the force reasonably necessary to prevent plaintiff from further  
24 injuring him and other persons present.

25 Any damages or injuries suffered by plaintiff were occasioned by his own wrongful acts;  
26 and the acts of defendants mentioned above are the same acts of which plaintiff complains.

EIGHTH AFFIRMATIVE DEFENSE

AS AND FOR A EIGHTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
ALLEGE:

The plaintiff willfully and wrongfully provoked the altercation in which he was involved,  
and said provocation by plaintiff was a cause of the injuries and damages allegedly sustained.

NINTH AFFIRMATIVE DEFENSE

AS AND FOR A NINTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
ALLEGE:

This answering defendant, a public entity, is immune from liability pursuant to California  
Government Code sections 800 et seq.

TENTH AFFIRMATIVE DEFENSE

AS AND FOR A TENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
ALLEGE:

At all times mentioned in the complaint, defendants were a public employee of City of  
Cotati and if they performed any of the acts or omissions alleged as the basis of the complaint, the  
acts or omissions were the result of the exercise of the discretion vested in him/her. Defendant is  
therefore immune from liability.

ELEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A ELEVENTH, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

Defendants alleged employee mentioned in plaintiff's complaint were, at all times, duly  
qualified, appointed and acting police officer of City of Cotati and peace officer of the State of  
California and in accordance with the Constitution of the United States and the State of California  
and the laws of the United States and the laws of the State of California; and at all times  
mentioned herein, said officer ANTHONY GARBER was engaged in the performance of his  
regularly assigned duties within the scope of his duties as peace officer of the City of Cotati.



TWELFTH AFFIRMATIVE DEFENSE

AS AND FOR A TWELFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

These answering defendants acted in good faith and with a reasonable belief that the actions were lawful and further did not directly or indirectly perform any acts whatsoever which would constitute a breach of any duty owed to plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

The acts of these answering defendants were lawful and proper and in all respects was reasonable and legal.

FOURTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

These answering defendants are immune from liability pursuant to the provisions of §§ 815, 815.2, 818, 820.2, 820.4, 820.6, 820.8, 820.9, 821.6, 844.6, and 845.6 of the Government Code of the State of California.

FIFTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

Defendants are immune from 42 U.S.C. §1983 liability pursuant to the doctrine of qualified immunity. See *White v. Pauly*, 137 S. Ct. 548 (2017), *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011) and *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

SIXTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS ALLEGE:

The facts alleged in the Complaint do not involve any custom, practice, procedure or regulation of defendants, which gives rise to a violation of a constitutional right pursuant to *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978).

SEVENTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

Plaintiff has wholly failed to plead facts which give rise to any colorable claim for punitive or exemplary damages against defendants, nor do any such facts exist.

EIGHTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A EIGHTEENTH, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

Plaintiff's claims for punitive or exemplary damages violate defendants' right to procedural due process, substantive due process, and protection from "excessive" fines as guaranteed by the Fifth, Fourteenth, and Eighth Amendments to the United States Constitution, respectively, and the Constitution of the State of California.

NINETEENTH AFFIRMATIVE DEFENSE

AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

These answering defendants acted in good faith and with a reasonable belief that the actions were lawful and further did not directly or indirectly perform any acts whatsoever which would constitute a breach of any duty owed to plaintiff.

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1 WHEREFORE, defendants pray that plaintiff takes nothing by way of the complaint on  
2 file herein and that defendants have judgment for their costs, attorneys' fees and for such other  
3 and further relief as the court deems proper.

4  
5 Respectfully submitted,

6 Dated: June 25, 2020

7 ALLEN, GLAESSNER,  
8 HAZELWOOD & WERTH, LLP

9 By: /s/ Dale L. Allen, Jr.  
10 DALE L. ALLEN, JR.  
11 KEVIN P. ALLEN  
12 Attorneys for Defendants  
13 CITY OF COTATI, OFFICER ANTHONY  
14 GARBER, CORPORAL BRIAN DEATON  
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